

AMENDED IN SENATE APRIL 24, 2003

**SENATE BILL**

**No. 335**

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**Introduced by Senator Romero**  
**(Coauthor: Senator Kuehl)**  
*(Coauthor: Assembly Member Hancock)*

February 19, 2003

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An act to add Title 6 (commencing with Section 40000) to the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 335, as amended, Romero. Corporations: *Corporate Three Strikes Act*.

Existing law sets forth requirements and procedures for the formation of corporations, partnerships, and limited liability companies and for the transaction of intrastate business by these entities.

This bill would enact the Corporate Three Strikes Act ~~that~~, *which* would require general corporations, nonprofit public benefit corporations, nonprofit mutual benefit corporations, partnerships, and limited liability companies that are convicted of certain felony crimes to meet specified reporting requirements. The bill would also prohibit repeat offenders, as defined, from incorporating, forming, or transacting business in this state. The bill would impose a civil fine on a repeat offender that would *either* be assessed by *a court or by* the Secretary of State and deposited into the General Fund. The bill would require the Secretary of State and the Attorney General to enforce the act.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Title 6 (commencing with Section 40000) is added to the Corporations Code, to read:

TITLE 6. CORPORATE THREE STRIKES ACT

40000. This title shall be known and may be cited as the Corporate Three Strikes Act.

40001. The Legislature finds and declares all of the following:

(a) Some corporations and other entities authorized under the Corporations Code repeatedly violate the law and, if caught, pay relatively insignificant amounts that they pass on to the public as a cost of doing business. This practice is a gross injustice both to the public and to law-abiding businesses, and also undermines a healthy California economy.

(b) Threats of imprisonment are meaningless when directed at corporations and other entities that under the law are fictional persons, because there is no way to imprison a fictional person.

(c) The courts have long held, however, that corporations and other such fictional persons are mere artificial creatures of law and may be dissolved or denied permission to do business if they violate the law. The statutes of California permit these remedies, but public authorities rarely use them.

(d) Therefore, to protect the people and economy of the State of California, the Legislature declares that no entity subject to this title shall be authorized by the State of California to do business if it has been convicted of three or more felony crimes as specified in this title.

40002. (a) This title applies to the following entities:

(1) General corporations subject to Division 1 (commencing with Section 100) of Title 1.

(2) Nonprofit public benefit corporations subject to Part 2 (commencing with Section 5110) of Division 2 of Title 1.

(3) Nonprofit mutual benefit corporations subject to Part 3 (commencing with Section 7110) of Division 2 of Title 1.

(4) Partnerships subject to Title 2 (commencing with Section 15501).

(5) Limited liability companies subject to Title 2.5 (commencing with Section 17000).

(b) This title does not apply to nonprofit religious corporations subject to Part 4 (commencing with Section ~~9440~~ 9110) of Division 2 of Title 1, or to corporations sole subject to Part 6 (commencing with Section 10000) of Division 2 of Title 1.

40003. (a) An entity subject to this title is a repeat offender if it has three or more strikes against it within any 10-year period after the effective date of this title.

(1) For purposes of this title, a strike against a wholly owned subsidiary shall also be considered a strike against the parent entity.

(2) For purposes of this title, the following terms shall have the following meanings:

(A) “Conviction” means a judgment or conviction by a court of competent jurisdiction in the United States, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(B) “Felony crime” means a crime that would be classified as a felony under Section 17 of the Penal Code if the crime were committed in California, or a federal crime that is classified as a class A, B, C, D, or E felony, as defined in Section 3559 of Title 8 of the United States Code.

(C) “Strike” means the conviction of a felony crime arising from any violation of fraud, tax, bribery, extortion, consumer protection, environmental protection, civil rights, labor, employment, antitrust, political campaign, or finance law.

(b) A repeat offender shall not be incorporated, formed, or transact intrastate business in California.

(c) An entity subject to this title shall not be incorporated, formed, or transact intrastate business in California if a majority of its directors or officers were directors or officers of a repeat offender when it became subject to subdivision (b), as determined by the Secretary of State after notice to the entity and an opportunity for the entity to respond.

(d) An entity subject to this title shall not be incorporated, formed, or transact intrastate business in California if it is legally controlled by an entity with a majority of directors or officers who were directors or officers of a repeat offender when it became subject to subdivision (b), as determined by the Secretary of State

1 after notice to the entity and an opportunity for the entity to  
2 respond.

3 40004. Multiple convictions arising out of the same facts and  
4 circumstances and heard by the same court shall be considered one  
5 conviction for purposes of this title.

6 40005. (a) An entity subject to this title that is formed under  
7 the laws of this state or is qualified to transact intrastate business  
8 in this state shall file with the Secretary of State an annual  
9 statement of any criminal convictions against the entity during the  
10 previous year.

11 (b) The Secretary of State shall prescribe an electronic form for  
12 submission of these statements; and shall make them available to  
13 the public in a timely fashion through the Secretary's Internet Web  
14 site. A statement shall be accessible on the Web site of the  
15 Secretary for a minimum of 10 years.

16 40006. (a) If a repeat offender is a corporation formed under  
17 the laws of this state, the Attorney General shall bring an action  
18 under Section 1801, 6511, or 8511, as applicable, to dissolve the  
19 corporation and provide for forfeiture of its corporate existence.

20 (b) If a repeat offender is a partnership or limited liability  
21 company formed under the laws of this state, the Attorney General  
22 shall bring an action under Section 803 of the Code of Civil  
23 Procedure for unlawful exercise of a franchise.

24 (c) If an entity is subject to subdivision (a) or (b), the court may  
25 appoint a receiver to take over and manage the business and affairs  
26 of the entity, and to preserve its property. The court shall issue  
27 orders, decrees, and injunctions as justice and equity require,  
28 consistent with the purposes of this title, and shall specifically  
29 issue orders necessary to ensure that jobs and wages are not lost,  
30 to protect community interests and legitimate investor interests,  
31 and to maintain the entity's obligations to protect the health, safety,  
32 and environment of workers and the public.

33 40007. If a repeat offender is an entity formed under the laws  
34 of a jurisdiction other than this state and is qualified to transact  
35 intrastate business in this state, the Secretary of State shall, after  
36 a fair hearing and on the basis of substantial evidence that the entity  
37 is a repeat offender, revoke the entity's qualification to transact  
38 intrastate business.

39 40008. (a) In addition to all other civil and criminal  
40 remedies, an entity subject to this title that has committed a first

1 or second strike offense shall publish the details of its offense in  
2 a full page advertisement in the largest newspaper of general  
3 circulation in ~~the state California~~ and in the largest newspaper of  
4 general ~~circulation in the community where the offense took~~  
5 ~~place.~~ *circulation in any community in California in which the*  
6 *offender transacts business.*

7 (b) In addition to all other civil and criminal remedies, an entity  
8 subject to this title that has committed a second strike offense shall  
9 be required to pay a civil fine to the General Fund. ~~The~~ *If an entity*  
10 *is convicted by a court of the commission of a second strike offense,*  
11 *the civil fine shall be assessed by the convicting court as part of the*  
12 *punishment for the offense; otherwise the* fine shall be assessed by  
13 the Secretary of State following the guidelines in subdivision (b)  
14 of Section 17536 of the Business and Professions Code, but shall  
15 not render the entity insolvent.

16 40009. (a) Neither the Attorney General nor the Secretary of  
17 State has discretion to refuse to enforce their respective duties set  
18 forth in this title.

19 (b) A person may petition the Attorney General or the  
20 Secretary of State to enforce this title against a repeat offender or  
21 a first or second strike offender.

22 (c) If the Attorney General or the Secretary of State rejects the  
23 petition, or fails to act within 180 days of the submission of the  
24 petition, a person may bring an action for a writ of mandate to  
25 compel enforcement of this title.

26 (d) The person bringing the action for writ of mandate shall be  
27 entitled to an award of costs and reasonable attorney's fees if he or  
28 she is the prevailing party.

29 SEC. 2. The provisions of this act are severable. If any  
30 provision of this act or its application is held invalid, that invalidity  
31 shall not affect other provisions or applications that can be given  
32 effect without the invalid provision or application.